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OF ORIGINAL FILED
Los Angeles Superior Court

AUG 18 2004

John A. Clarke, Executive Officer/Clerk
By J. SUNGA, Deputy

Attorneys for PLAINTIFFS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DIVISION

11 MICHAEL L. HUDSPETH, an
12 Individual; KAREN HUDSPETH, an
13 Individual; For Themselves And Acting
14 in the Interests of the General Public of
15 the State of California,

Plaintiffs,

vs.

16 SAMIRA ABDELMALAK, an
17 Individual; UNLIMITED
18 ENVIRONMENTAL, INC., a California
19 corporation; ALVARO PRADA, an
20 Individual; FREDDIE HUBBARD, an
21 Individual; VIC SERVICE, an Entity of
22 unknown form; JOSE VELASQUEZ, an
23 Individual; ACOUSTIC CEILING &
24 WALL TEXTURE, an Entity of
25 unknown form; and DOES 6 through 40,
26 inclusive,

Defendants.

AND RELATED CROSS-ACTION

CASE NO. BC 306 534

Assigned for all purposes to Hon. Rita Miller, Dept. 16

**THIRD AMENDED COMPLAINT
FOR DAMAGES AND INJUNCTIVE
RELIEF [PROPOSED]**

1. Breach of the Warranty of Habitability
2. Nuisance - Negligence
3. Nuisance - Intentional
4. General Negligence
5. Negligence Per Se
6. Breach of the Implied Covenant of Quiet Use and Enjoyment
7. Retaliatory Eviction
8. Breach of Contract
9. Violation of Civil Code §1942.4
10. Unfair Competition/Unfair Business Practices Under Business and Professions Code §§ 17200, *et seq.*
11. Intentional Infliction of Emotional Distress
12. Fraud/Deceit
13. Conversion
14. Violation of Cal. Health and Safety Code §§ 25249.6, *et seq.* (Proposition 65)

JURY TRIAL DEMANDED

Action filed: 1/9/04

Trial date: Not assigned

1 COME NOW Plaintiffs and allege as follows:

2 **PARTIES**

3 1. Plaintiffs, Michael L. Hudspeth and Karen Hudspeth (hereinafter
4 collectively "Plaintiffs") are individuals who have resided at 2414 S. Barrington Avenue,
5 unit number 312, Los Angeles California 90064 ("the "Subject Premises") from
6 approximately 1993 until the present as described hereinbelow.

7 2. Defendant Samira Abdelmalak (hereinafter "Abdelmalak") is an
8 individual residing in the City of Los Angeles, California.

9 3. Defendant Unlimited Environmental, Inc. ("UEI") is a corporation duly
10 licensed to do business and doing business in California with its principal office in Signal
11 Hill, County of Los Angeles, California.

12 4. Defendant Alvaro Prada (hereinafter "Prada") is an individual residing in
13 the City of Los Angeles, California and is sued herein as Doe Defendant No. 1.

14 5. Defendant Freddie Hubbard (hereinafter "Hubbard") is an individual
15 residing in the City of Los Angeles, California and is sued herein as Doe Defendant No. 2.

16 6. Defendant VIC Service (hereinafter "VIC") is an entity of unknown form
17 doing business in the County of Los Angeles, California and is sued herein as Doe
18 Defendant No. 3.

19 7. Defendant Jose Velasquez "hereinafter "Velasquez") is an individual
20 residing in the City of Los Angeles, California and is sued herein as Doe Defendant No. 4.

21 8. Defendant Acoustic Ceiling & Wall Texture (hereinafter "Acoustic") is
22 an entity of unknown form doing business in the County of Los Angeles, California and is
23 sued herein as Doe Defendant No. 5.

24 9. Since 1994 Plaintiffs have occupied and resided at the Subject Premises
25 pursuant to a written agreement executed on or about October 1, 1994 between Plaintiffs
26 as tenants, and Abdelmalak's predecessor-in-interest, J. Khoury. A true and correct copy
27 of the rental agreement is attached hereto as Exhibit "A". The lease agreement was
28 renewed after the first year as a month-to-month lease under paragraph 11 of the lease

1 cracked, stained and unstable apparently due to roof leaks. Upon discovering this
2 condition soon after it began in late 2001, Plaintiffs reported the problem to Abdelmalak.
3 Abdelmalak failed to address the problem for many months, during which time this
4 ceiling material continued to decompose and crumble, falling onto the floors, carpets,
5 furniture, clothes, food, and even persons of Plaintiffs. Plaintiffs continued to complain,
6 yet Abdelmalak failed to address either the leaks that apparently caused the ceiling
7 material to deteriorate and fall or the crumbling ceiling plaster itself. The ceiling
8 deterioration continued, causing decomposed asbestos-containing material to drop from
9 the ceiling, become airborne, and be deposited onto surfaces throughout Plaintiffs' home.

10 18. During this period, and unbeknownst to Plaintiffs, the material that was
11 decomposing within their living environment and to which they were exposed at all times
12 while in their apartment contained dangerously high levels of asbestos and/or other
13 contaminants. These contaminants to which Plaintiffs were exposed and continue to be
14 exposed are harmful to Plaintiffs' health and produced physical and emotional injuries.
15 Plaintiffs, however, were unaware that these toxic agents were present in their living
16 environment and were unaware of the health risks that such contaminants presented.
17 Abdelmalak, however, knew or should have known that the above-described conditions
18 posed a severe health risk to Plaintiffs.

19 19. Abdelmalak eventually elected to address the ceiling problem in or
20 about the middle of September 2003. At various times, beginning in or about September
21 17, 2003, Abdelmalak hired Defendants Alvaro Prada, Freddie Hubbard, Vic Service,
22 Jose Velasquez, and Acoustic Ceiling & Wall Texture (hereinafter collectively "the
23 Unlicensed Contractor Defendants"), individually and/or in combination, to simply scrape
24 the asbestos-containing ceiling material off of the plaster comprising Plaintiffs' ceiling.
25 On information and belief, said Defendants were unqualified and unlicensed to perform
26 asbestos abatement or remediation work. Nevertheless, these defendants undertook this
27 operation--with Abdelmalak's knowledge and consent and at her request, *inter alia*,:
28

- 1 i.) without first determining whether asbestos was present in the ceiling
2 plaster, as required by Cal. Labor Code §§ 65001.5, 6501.9 and
3 6505.5;
- 4 ii.) without providing adequate notice to Plaintiffs, who had no
5 opportunity to understand or prepare for the work to be done;
- 6 iii.) without giving the required legal notice to the South Coast Air
7 Quality Management District (“SCAQMD”), as required by
8 SCAQMD regulations;
- 9 iv.) without securing a suitable replacement dwelling for Plaintiffs to
10 reside during the removal/remediation process;
- 11 v.) without the use of a licensed and qualified asbestos remediation
12 contractor, as required by Cal. Labor Code § 7058(a);
- 13 vi.) without removing Plaintiffs’ persons, pets or property from the
14 remediation site; and
- 15 vii.) without posting the warnings required under Cal. Bus. & Prof. Code
16 § 25916 and SCAQMD Rule 1403 or otherwise undertaking any
17 health preservation measures whatsoever with respect to either
18 Plaintiffs’ health or that of the uncertified workman hired to
19 complete the work.

20 Defendant Abdelmalak is liable for the negligent acts and omissions of the Unlicensed
21 Contractor Defendants under principles of, *inter alia*, the doctrine of *respondeat superior*.

22 20. Abdelmalak’s failure to offer and secure alternative replacement
23 housing for Plaintiffs during this period forced Plaintiffs to live in the Subject Premises
24 during and immediately following this ceiling removal work in and after September 2003.
25 Because they were not removed from their apartment during the removal work, and
26 because that work was done in an entirely unsafe manner by a person not licensed to
27 perform it, Plaintiffs were exposed to asbestos and/or other hazardous materials and
28 debris both during the work and after its termination. The asbestos work done in this

1 manner by Abdelmalak placed Plaintiffs and their pets in a perpetual state of exposure to
2 toxic substances on their clothes, furniture, floors and carpets, kitchen utensils, electronic
3 equipment, etc.

4 21. Plaintiffs were unaware that they were exposed to asbestos or other
5 toxins as alleged herein until they initiated a communication with the SCAQMD in
6 September 2003. SCAQMD sampling and testing in Plaintiffs' apartment after the above-
7 described work was concluded has confirmed the presence of asbestos at alarmingly high
8 levels in the Subject Premises and has resulted in regulatory enforcement action against
9 Defendant Abdelmalak. SCAQMD required Abdelmalak to have a SCAQMD Rule 1403
10 Procedure 5 Asbestos Clean-up Plan prepared and to remediate the Subject Premises
11 pursuant to specific guidelines mandated by SCAQMD.

12 22. After SCAQMD-mandated testing confirmed the presence of extremely
13 unsafe levels of asbestos in the Subject Premises, Abdelmalak failed and refused to
14 apprise Plaintiffs of this condition, despite her knowledge of the relevant facts and in the
15 face of repeated requests for information made to her by Plaintiffs. Rather, said
16 Defendant refused to notify or warn Plaintiffs of the known presence of the asbestos or to
17 share with Plaintiffs the results of the asbestos testing. As a consequence of said
18 Defendant's outrageous refusal to provide these non-privileged testing data to Plaintiffs,
19 Plaintiffs remained in their apartment ignorant of the facts relating to the presence of
20 contaminants there for a substantial period of time.

21 23. Following the SCAQMD inspection of their apartment, Plaintiffs
22 requested that Abdelmalak pay to relocate them temporarily to a safe premises until the
23 renovation work could be performed at the Subject Premises. Abdelmalak ignored this
24 request for several weeks, and meanwhile hid from Plaintiffs the fact that Plaintiffs'
25 apartment was literally awash with hazardous asbestos particles. In this manner,
26 Abdelmalak knowingly, intentionally and unnecessarily exposed Plaintiffs over several
27 weeks in late 2003 to an extremely hazardous living environment, to their serious harm.

28 24. After the SCAQMD compelled Defendant Abdelmalak to retain a

1 licensed asbestos removal contractor, she rejecting at least one competent, responsible
2 licensed asbestos remediation contractor because that company insisted upon following
3 SCAQMD guidelines in performing the remediation work. Determined to economize by
4 skirting these regulatory requirements, said Defendant eventually settled on Defendant
5 UEI to do the remediation work on Plaintiffs' apartment. Defendant UEI employed
6 incompetent and dishonest workers and managers who failed to perform the asbestos
7 remediation in a professionally responsible, safe and workmanlike manner. UEI's
8 performance constitutes a virtual how-to manual of what not to do in asbestos remediation
9 and removal. UEI failed to remove asbestos dust from furniture, clothing, and other of
10 Plaintiffs' personal effects that were to have been thoroughly cleaned. UEI also failed to
11 remove and remediate around electrical fixtures and appliances in Plaintiffs' unit.
12 Defendant Abdelmalak is liable for the negligent acts and omissions of Defendant UEI
13 under principles of, *inter alia*, the doctrine of *respondeat superior*.

14 25. Defendant Abdelmalak also conspired with Defendant UEI's employees
15 to disregard the SCAQMD Procedure 5 Asbestos Clean-Up Plan and to violate applicable
16 regulatory standards in the work to be done at the subject property. That Plan called for
17 all cloth and porous items in the unit to be removed from the Subject Premises and
18 discarded as hazardous waste in an appropriate landfill. SCAQMD has determined that
19 such items can never be fully decontaminated and thus must be destroyed. Defendant
20 Abdelmalak knew this and knew she would be required to reimburse Plaintiffs for the
21 replacement of their contaminated belongings. She thereupon formulated a scheme to
22 save money by not disposing of most of Plaintiffs' contaminated personal property as part
23 of the remediation. As part of this conspiracy, Defendant Abdelmalak secured Defendant
24 UEI workers' complicity in unlawfully preserving Plaintiffs' contaminated clothing and
25 other belongings, which UEI staff did not remove and dispose of, but rather bagged,
26 stored and later returned to Plaintiffs even though fully contaminated with asbestos. As a
27 measure of how unbelievably illegal and improper were said Defendants' actions, UEI
28 staff actually bagged, stored and returned to Plaintiffs their old vacuum cleaner—the very

1 machine that they had used for years to collect asbestos-laden dust from their
2 contaminated carpet. By forming and carrying out this secret conspiracy, said Defendants
3 intended to minimize the remediation costs and ultimate financial responsibility of
4 Abdelmalak. Plaintiffs' contaminated clothing and other cloth and porous belongings
5 were returned to them by Defendant UEI at Defendant Abdelmalak's direction, thereby
6 compounding the risks and harm to Plaintiffs.

7 26. Plaintiffs are informed and believe and thereon allege that in addition to
8 the conspiracy to thwart the Asbestos Clean-Up Plan, Defendant UEI's employees
9 converted numerous items of Plaintiffs' property. During the asbestos abatement process,
10 no one other than UEI and Defendant Abdelmalak had access to or custody of Plaintiffs'
11 property. When Plaintiffs' bagged property was returned to them by UEI, Plaintiffs
12 discovered that a substantial number of collectible art pieces, tools, expensive clothing
13 items and other valuables were missing. UEI has failed to account for these stolen items,
14 which Plaintiffs allege were converted by these UEI employees.

15 27. Adding utter insult to injury, UEI workers rifled through Plaintiffs'
16 intimate personal possessions in carrying out their marauding actions in Plaintiffs'
17 apartment. Said Defendant's employees went through sealed envelopes of photographs,
18 culling and rearranging selected highly personal pictures and regrouping them so as to
19 show clearly that the photographs had been examined closely and to demonstrate
20 unmistakably that Plaintiffs' privacy had been invaded. A similar game of culling and
21 rearrangement was played by UEI workers with underwear and intimate apparel of
22 Plaintiffs. Plaintiffs suffered embarrassment, humiliation and mortification upon
23 discovering that their most intimate personal moments and effects had been so
24 unexpectedly and callously been turned into a salacious game for the amusement of
25 Defendant UEI's employees.

26 28. As a result of their being exposed to asbestos and other airborne
27 contaminants as described herein, Plaintiffs have suffered many symptoms related to these
28 toxins including, but not limited to:

- a. Diverticulosis, and/or related or similar conditions causing symptoms including, but not limited to, hemorrhoids, inflamed colon, high fever, pain, blood in the stool, constipation, etc.;
- b. eye irritation and vision problems;
- c. sinus and throat infection, inflammation and soreness;
- d. cough;
- e. nasal and sinus congestion;
- f. headaches;
- g. nausea;
- h. body weakness;
- i. fatigue;
- j. and overall deficient health.

The above-described physical ailments have forced both of the Plaintiffs to undergo surgery and have impaired Plaintiffs' ability to perform their employment duties and threaten to lead to Plaintiffs' work disability, either temporary or permanent.

Furthermore, Plaintiffs have suffered mental, physical, psychological and emotional pain and suffering. Plaintiffs have suffered injury to their bodies, physical health, loss of strength and well being, all of which has caused and continues to cause, mental and emotional pain and suffering. As a result of the excessive levels of asbestos and/or other toxic materials discovered throughout the Subject Premises, Plaintiffs have also suffered property loss.

29. The collaborative actions of Defendants Abdelmalak and UEI constituted a civil conspiracy. Said Defendants, and each and all of them, formed the conspiracy by agreeing to commit the abovedescribed wrongful acts, then in fact committed those acts, with the resulting described damage to Plaintiffs.

30. The actions of Defendants as described above were extreme and outrageous and were carried out with full knowledge of the likely adverse impacts that such deeds would have on the health, well being, and emotional states of Plaintiffs.

1 Accordingly, these action warrant the imposition of punitive damages in favor of
2 Plaintiffs as against Defendants.

3
4 **OTHER DEFECTS IN THE LEASED PREMISES**
5 **UNADDRESSED BY DEFENDANTS**

6 31. During Plaintiffs' tenancy at the Subject Premises, said property and the
7 common areas of the buildings were and are now, and at all material times herein, have
8 been unsafe, unsanitary, unhealthy, uninhabitable, untenable and in a serious state of
9 dilapidation and in violation of building, health and safety codes, ordinances, regulations
10 and other laws. At all times material herein, Abdelmalak has rented, is renting, and will
11 continue to rent the property for human habitation and use to each Plaintiff and to the
12 general public, while said property has been, continues to be, and will continue to be
13 maintained in this unlawful condition. The relevant laws which said Defendant has
14 violated and continues to violate include the habitability laws contained in the California
15 Civil Code, California Health and Safety Code, Los Angeles Municipal Code, the Los
16 Angeles County Public Health Code, and others. In addition to the matters described
17 above, during the two years prior to the filing of this action, the following conditions have
18 been present in the Subject Premises:

- 18 a. Lack of a functioning heater;
- 19 b. Lack of hot water for bathing and cooking during morning hours due to
20 water heater timer;
- 21 c. Lack of a working stove unit (only one functional burner);
- 22 d. Non-functioning and/or missing electrical outlets and exposed electrical
23 wires;
- 24 e. Unacceptable water quality (turbid, foul tasting and smelling) due to age
25 of pipes;
- 26 f. Leaking refrigerator;
- 27 g. Poor water pressure and dilapidated plumbing;
- 28 h. Leaking kitchen sink;

- i. Windows that are not weather-proofed;
- j. Mold and mildew and contamination caused by presence of moisture from leaking water pipes, kitchen sink and refrigerator;
- k. Lack of lighting in garage and common-area;
- l. Dangerous hanging metal strap in garage;
- m. Flooding of garage floor caused by leaks, improper drainage, etc.
- n. Broken sliding glass door in living room;
- o. Broken glass shower door;
- p. Broken living room light fixture; and
- q. General deterioration, dilapidation and improper maintenance of the building in substandard, dangerous unhealthful uninhabitable conditions.

32. Plaintiffs notified Abdelmalak of the foregoing conditions at numerous times over the during the two years prior to the filing of this action. Said Defendant thus knew of these housing conditions and either failed to attempt remedy the conditions and/or failed to adequately repair the problems.

33. Instead of making the repairs that the law mandates and maintaining the Subject Property in a habitable condition, Abdelmalak retaliated against Plaintiffs for demanding that the apartment be fixed. This retaliation took the form of said Defendant raising Plaintiffs' rent; reducing services to Plaintiffs; making open threats to evict or cause harm to Plaintiffs; and serving Plaintiffs with sham notices to cure purported lease violations that had no justification or basis in fact.

34. Throughout Plaintiffs' tenancy at the Subject Premises, Abdelmalak created and maintained a hostile atmosphere by, *inter alia*:

- i.) Demanding that Plaintiffs remove an American flag lawfully displayed by Plaintiffs in front of their apartment or else face punishment by the landlord;
- ii.) Prohibiting Plaintiffs from using the building elevator to take their dog for walks, forcing Plaintiff Karen Hudspeth to descend and climb three flights of stairs despite a hip injury;

1 38. During the two years prior to the filing of this action, Plaintiffs on
2 numerous occasions made Abdelmalak aware of the abovedescribed defects and
3 conditions in the Subject Premises, including but not limited to those defects and
4 problems set forth in paragraph 27, above. Abdelmalak failed for many months to repair
5 these defects, thereby leaving the Subject Premises in an uninhabitable condition, as set
6 forth above. Abdelmalak failed to correct these defects within the time allowed by law
7 and thereby breached the implied warranty of habitability with respect to Plaintiffs by
8 virtue of said failures to act. Through her acts and omissions, Abdelmalak failed
9 substantially to comply with Civil Code section 1941.1.

10 39. As a direct and proximate result of the breach of this duty owed by said
11 Defendants, Plaintiffs suffered damages including, but not limited to, personal injury,
12 property damages and loss, discomfort, annoyance, frustration, embarrassment,
13 humiliation, illness, and severe emotional distress. Additionally, Plaintiffs were deprived
14 of the beneficial use of the premises and have, consequently, suffered damages in the
15 form of overpaid rent. The total of compensatory damages suffered by Plaintiffs are not
16 known at present but are in the sum of not less than \$1,500,000.00.

17 WHEREFORE, Plaintiffs pray for compensatory damages in the sum of not
18 less than \$1,500,000.00.

19
20 **SECOND CAUSE OF ACTION**

21 **(Nuisance-Negligence—Against Abdelmalak)**

22 40. Plaintiffs reallege paragraphs 1 through 35 and 37 through 39 of this
23 Complaint as though fully set forth herein.

24 41. The adverse housing conditions of the premises, as heretofore alleged,
25 constituted a private nuisance within the meaning of California Civil Code sections 3479
26 and 3481.

27 42. Said nuisance affected and specially injured Plaintiffs in that they were
28 deprived of the safe and comfortable use and quiet enjoyment of the Subject Premises as

1 are not known at present but are in the sum of not less than \$1,500,000.00.

2 WHEREFORE, Plaintiffs pray for compensatory damages in the sum of not
3 less than \$1,500,000.00 and punitive damages according to proof.

4
5 **FOURTH CAUSE OF ACTION**

6 **(General Negligence—Against All Defendants)**

7 47. Plaintiffs reallege paragraphs 1 through 35, 37 through 39, 41 through
8 44 and 46 of this Complaint as though fully set forth herein.

9 48. At all relevant times described herein, the Defendants, and each of
10 them, were under a legal duty to act in a reasonable manner in carrying out their
11 respective obligations to Plaintiffs. Defendants owed this duty of due care to Plaintiffs.
12 Abdelmalak was under a duty to provide Plaintiffs with a habitable premises, and to take
13 reasonable steps to protect Plaintiffs from the likely harm that could result from being
14 exposed to a toxic substance such as asbestos. Defendant UEI was under a duty to
15 perform the asbestos removal and remediation in Plaintiffs' apartment in a workmanlike
16 and professional manner, and to adhere to the standards of the industry in carrying out the
17 work they performed.

18 49. The Defendants, and each of them, failed to exercise ordinary and
19 reasonable care in carrying out these duties and, therefore, breached their respective duties
20 of due care to Plaintiffs, proximately resulting in general and special damages to
21 Plaintiffs. The total of compensatory damages suffered by Plaintiffs are not known at
22 present but are in the sum of not less than \$1,500,000.00.

23 WHEREFORE, Plaintiffs for compensatory damages in the sum of not less
24 than \$1,500,000.00.

25
26 **FIFTH CAUSE OF ACTION**

27 **(Negligence Per Se—Against All Defendants)**

28 50. Plaintiffs reallege paragraphs 1 through 35, 37 through 39, 41 through

1 44, 46, 48 and 49 of this Complaint as though fully set forth herein.

2 51. The laws and regulations of the State of California and the County of
3 Los Angeles, including, but not limited to, California Civil Code §1941, §1941.1, and
4 Health and Safety Code §17920.3, impose statutory duties on Abdelmalak to maintain the
5 premises in a safe and habitable condition. These laws were enacted to protect residential
6 tenants like Plaintiffs from the type of harm complained of herein and to impose duties on
7 landlords, such as Abdelmalak, to prevent such harm from occurring.

8 52. Plaintiffs notified Abdelmalak of the existence of the aforementioned
9 housing conditions and defects set forth hereinabove at the times specified herein.
10 Abdelmalak repeatedly failed to remedy these conditions within the time allowed by law.

11 53. In maintaining the premises described herein, Abdelmalak failed to
12 exercise ordinary and reasonable care in complying with the aforementioned statutorily
13 imposed duties, and, therefore, breached the same, proximately resulting in general and
14 special damages to Plaintiffs according to proof.

15 54. Defendants UEI and Abdelmalak also violated the above-described
16 asbestos-related laws, regulations and SCAQMD Procedure 5 Asbestos Clean-Up Plan by
17 intentionally avoiding the requirements of those laws and regulatory orders and failing to
18 remove and remediate the asbestos in the manner prescribed by law. The stated laws and
19 regulations were enacted in order to protect persons such as Plaintiffs from being exposed
20 to asbestos wherever possible, particularly in circumstances where a governmentally-
21 mandated asbestos clean-up program has been required. Through their actions and
22 omissions, as alleged herein, said Defendants failed to exercise due and reasonable care in
23 complying with these statutorily imposed duties toward Plaintiffs, and thereby breached
24 same, proximately resulting in general and special damages to Plaintiffs. The total of
25 compensatory damages suffered by Plaintiffs are not known at present but are in the sum
26 of not less than \$1,500,000.00.

27 WHEREFORE, Plaintiffs pray for compensatory damages in the sum of not
28 less than \$1,500,000.00.

1 **SIXTH CAUSE OF ACTION**

2 **(Breach of the Implied Covenant of Quiet Use and Enjoyment–**
3 **Against Abdelmalak)**

4 55. Plaintiffs reallege paragraphs 1 through 35, 37 through 39, 41 through
5 44, 46, 48, 49 and 51 through 54 of this Complaint as though fully set forth herein.

6 56. In renting the subject premises to Plaintiffs, Abdelmalak covenanted
7 not to interfere with Plaintiffs' full use and enjoyment of the subject premises.

8 57. As a direct and proximate result of Abdelmalak's outrageous and
9 tortious conduct hereinabove alleged, said Defendants seriously impaired Plaintiffs' quiet
10 use and enjoyment of the premises. Thus, Abdelmalak breached the covenant of quiet use
11 and enjoyment as to Plaintiffs.

12 58. As a direct and proximate result of said Defendants' conduct as
13 heretofore alleged, Plaintiffs lost the substantial use and quiet enjoyment of their dwelling
14 place, suffered the reduction of the fair rental value of the premises herein described, and
15 suffered actual, general and special damages according to proof, including, but not limited
16 to, overpaid rent. The total of compensatory damages suffered by Plaintiffs as a result of
17 Defendant's breaches of the implied covenant are in the sum of not less than \$18,000.00.

18 WHEREFORE, Plaintiffs pray for compensatory damages in the sum of not
19 less than \$18,000.00.

20 **SEVENTH CAUSE OF ACTION**

21 **(Retaliatory Eviction–Against Abdelmalak)**

22 59. Plaintiffs reallege paragraphs 1 through 35, 37 through 39, 41 through
23 44, 46, 48, 49, 51 through 54 and 56 through 58 of this Complaint as though fully set forth
24 herein.

25 60. Pursuant to the rental agreement, the Plaintiffs entered into possession
26 of the Subject Premises in or about October 1994 and, with a brief interruption for
27 asbestos remediation efforts, continued in possession until the present.
28

1 61. Within three years of the filing of this action, Plaintiffs informed
2 Abdelmalak of the repairs needed to their unit, as described hereinabove.

3 62. Thereafter, Abdelmalak decreased services, threatened to commit
4 unspecified harmful acts against Plaintiffs, harassed Plaintiffs and served Plaintiffs with
5 bogus notices to cure purported “violations” of the lease agreement which were without
6 any basis in fact. The retaliation included of refusing to acknowledge or respond to
7 Plaintiffs’ complaints to Abdelmalak concerning problems with the apartment; barring
8 Plaintiffs from using the building elevator; refusing to allow Plaintiffs to display the
9 American flag in front of their apartment; threatening Plaintiffs with eviction or other
10 unspecified wrongful acts through the medium of an “enforcer” sent by Abdelmalak to
11 intimidate Plaintiffs; and other intentional retaliatory acts.

12 63. As a direct and proximate result of these retaliatory actions by
13 Abdelmalak, Plaintiffs suffered general and special damages. The total of compensatory
14 damages suffered by Plaintiffs are not known at present but are in the sum of not less than
15 \$1,500,000.00.

16 64. The retaliatory actions of Abdelmalak herein alleged—which in and of
17 themselves constitute a retaliatory eviction—were oppressive and malicious within the
18 meaning of Section 3294 of the Civil Code in that they subjected Plaintiffs to cruel and
19 unjust hardship in conscious disregard of Plaintiffs’ rights and safety, thereby entitling
20 Plaintiffs to an award of punitive damages.

21 65. Section 1942.5(g) of the Civil Code provides that in any action brought
22 for damages for retaliatory eviction, the Court shall award reasonable attorney fees to the
23 prevailing party.

24 WHEREFORE, Plaintiffs for compensatory damages in the sum of not less
25 than \$1,500,000.00, punitive damages and attorneys fees.

26
27
28

1 **EIGHTH CAUSE OF ACTION**

2 **(Breach of Contract–Against Abdelmalak)**

3 66. Plaintiffs reallege paragraphs 1 through 35, 37 through 39, 41 through
4 44, 46, 48, 49, 51 through 54, 56 through 58 and 60 through 65 of this Complaint as
5 though fully set forth herein.

6 67. Plaintiffs and Abdelmalak’s predecessor-in-interest entered into a
7 written agreement in or about October 1994. A true and correct copy of that amended
8 rental agreement is attached hereto as Exhibit “A”. After the first year of the lease, the
9 agreement continued as a month-to-month lease. On information and belief, Abdelmalak
10 was assigned all of the landlord’s rights and obligations under the agreement and ratified
11 the existence of that written agreement through her conduct and actions.

12 68. Plaintiffs have performed all conditions, covenants, and promises
13 required to be performed by them in accordance with the terms and conditions of the
14 rental agreement, except those excused or prevented by Defendants’ conduct as herein
15 alleged.

16 69. Under the law of the State of California a landlord’s duty to comply
17 with the warranty of habitability is implied in every residential lease agreement. *See*
18 *Green v. Superior Court* (1974) 10 Cal.3d. 616. By renting the premises to Plaintiffs
19 pursuant to the lease agreement, Abdelmalak impliedly warranted the premises as
20 habitable and warranted that the premises were habitable. Pursuant to the lease agreement
21 and the implied warranty, therefore, Abdelmalak was under a duty to furnish a habitable
22 apartment to Plaintiffs.

23 70. During the two years prior to the filing of this action, Plaintiffs on
24 numerous occasions made Abdelmalak aware of the abovedescribed defects and
25 conditions in the Subject Premises, including but not limited to those defects and
26 problems set forth in paragraph 27, above. Abdelmalak failed for many months to repair
27 these defects, thereby leaving the Subject Premises in an uninhabitable condition, as set
28 forth above. Abdelmalak failed to correct these defects within the time allowed by law

1 and thereby breached the implied warranty of habitability with respect to Plaintiffs by
2 virtue of said failures to act.

3 71. As a direct and proximate result of the breach of this duty owed by
4 Abdelmalak, Plaintiffs suffered damages including, but not limited to, personal injury,
5 property damages and loss, discomfort, annoyance, frustration, embarrassment,
6 humiliation, illness, and severe emotional distress. Additionally, Plaintiffs were deprived
7 of the beneficial use of the premises and have, consequently, suffered damages in the
8 form of overpaid rent. The total of compensatory damages suffered by Plaintiffs are not
9 known at present but are in the sum of not less than \$1,500,000.00.

10 WHEREFORE, Plaintiffs pray for compensatory damages in the sum of not
11 less than \$1,500,000.00.

12
13 **NINTH CAUSE OF ACTION**

14 **(Violation of Civil Code § 1942.4--Against Abdelmalak)**

15 72. Plaintiffs reallege paragraphs 1 through 35, 37 through 39, 41 through
16 44, 46, 48, 49, 51 through 54, 56 through 58, 60 through 65 and 67 through 71 of this
17 Complaint as though fully set forth herein.

18 73. On or about September 19, 2003, personnel from the South Coast Air
19 Quality Management District made inspections of the Subject Premises. These
20 inspections disclosed some or all of the aforementioned unsafe and unhealthful housing
21 conditions and defects in the Subject Premises, including but not limited to the presence
22 of dangerous and unhealthful levels of friable asbestos particles in Plaintiffs' apartment.

23 74. SCAQMD officials advised Abdelmalak of these conclusions within
24 approximately one week of the stated inspections and served her with a SCAQMD Rule
25 1403 Procedure 5 Asbestos Clean-up Plan. SCAQMD's notice required Abdelmalak to
26 remediate the Subject Premises pursuant to specific guidelines mandated by SCAQMD.

27 75. More than sixty days have elapsed since Abdelmalak was apprised of
28 the presence of friable asbestos in the Subject Premises and ordered to remediate same.

1 Defendant has failed and continues to fail to fully repair the conditions noted in the
2 SCAQMD clean-up plan. Asbestos material remains in the Subject Premises and Plaintiffs
3 are still being exposed to this toxic material.

4 76. None of the conditions noted by the SCAQMD were caused by acts or
5 omissions of the Plaintiffs. Defendant's delay in effecting the remediation is without
6 good cause.

7 77. As a direct and legal result of Defendant's violation of Civil Code
8 § 1942.4, Plaintiffs have suffered actual and special damages including, but not limited
9 to, personal injury, property damages and loss, discomfort, annoyance, frustration,
10 embarrassment, humiliation, illness, and severe emotional distress. Additionally,
11 Plaintiffs were deprived of the beneficial use of the premises and have, consequently,
12 suffered damages in the form of overpaid rent. The total of compensatory damages
13 suffered by Plaintiffs are not known at present but are in the sum of not less than
14 \$1,500,000.00.

15 78. Based on the foregoing violation, Plaintiffs are entitled to attorneys fees
16 under Civil Code section 1942.4(b).

17 WHEREFORE, Plaintiffs pray for compensatory damages in the sum of not
18 less than \$1,500,000.00 and attorneys fees according to proof.

19
20 **TENTH CAUSE OF ACTION**

21 **(Unfair Competition/Unfair Business Practices Under Business &
22 Professions Code §§ 17200, et seq.—Against All Defendants)**

23 79. Plaintiffs reallege paragraphs 1 through 35, 37 through 39, 41 through
24 44, 46, 48, 49, 51 through 54, 56 through 58, 60 through 65 and 73 through 78 of this
25 Complaint as though fully set forth herein.

26 80. The California Unfair Business Practices Act, Business and Professions
27 Code ("B & P Code") §§ 17200, et seq., is designed to "safeguard the public . . . and
28 foster and encourage competition by prohibiting unfair, dishonest, deceptive, destructive,

1 fraudulent and discriminatory practices by which fair and honest competition is destroyed
2 or prevented.” (B & P Code § 17001.) B & P Code § 17200 defines unfair competition to
3 mean and include “unlawful, unfair or fraudulent business practice.” Section 17203 of
4 the Code provides that “(a)ny person performing or proposing to perform an act of unfair
5 competition within this state may be enjoined in any court of competent jurisdiction.”

6 81. Abdelmalak, as alleged above, is or was engaged in the business of
7 owning, leasing, managing and/or operating residential apartment buildings and units in
8 that building to members of the public. In connection with these business operation, said
9 Defendant committed violations of law including but not limited to Cal. Labor Code
10 §§ 6501.5, 6501.9, 6505.5 and § 7058(a); Cal. Civil Code §§ 1941, 1941.1, 1942.2,
11 1942.5(g), 3479 and 3481; Cal. Health and Safety Code §§ 17920.3, *et seq.*; SCAQMD
12 Rule 1403 and California’s Safe Drinking Water and Toxic Enforcement Act of 1986
13 (Cal. Health and Safety Code §§ 25249.5, *et seq.* [hereinafter “Proposition 65”]). The
14 acts by Abdelmalak that constitute these violations are as set forth hereinabove, and
15 include the failure to furnish a habitable premises to Plaintiffs, the hiring of an unlicensed
16 and unqualified laborer to perform the asbestos abatement, failure to properly abate the
17 asbestos problem in the Subject Premises, failure to comply with legal requirements prior
18 to commencement of the abatement work, conspiring with UEI to thwart the SCAQMD
19 clean-up requirements, knowingly exposing Plaintiffs to toxic asbestos, etc. Each of these
20 acts also constitute an unfair business practice and several of the actions constitute
21 fraudulent practices. These actions all constitute unfair business practices forbidden by
22 law within the meaning of B & P Code § 17200.

23 82. Defendant UEI, as alleged above, is or was operating as a certified
24 asbestos abatement and remediation contractor in California. In connection with said
25 business operation, said Defendant violated SCAQMD Rule 1403 by knowingly and
26 intentionally failing to remediate the Subject Premises as required under the above-
27 described SCAQMD cleanup plan and by conspiring with Abdelmalak to evade the
28 SCAQMD requirements as described here. In addition, said Defendant violated

1 Proposition 65 by exposing Plaintiffs to asbestos without a warning. on information and
2 belief, employees of UEI converted property of the Plaintiffs during the clean-up
3 operation. The property converted included leather jackets and other clothing, hand
4 and/or power tools, and other personal effects. These actions were illegal, unfair, and
5 fraudulent and constitute unfair business practices within the meaning of B & P Code
6 § 17200, et seq.

7 83. On information and belief, the Unlicensed Contractor Defendants, as
8 alleged above, are or were operating as asbestos abatement and remediation contractors
9 in California. In connection with said business operation, said Defendants committed
10 violations of law including but not limited to Cal. Labor Code §§ 6501.5, 6501.9, 6505.5
11 and § 7058(a); Cal. Civil Code §§ 3479 and 3481; Cal. Health and Safety Code
12 §§ 17920.3, et seq.; and SCAQMD Rule 1403. The acts said Defendants that constitute
13 these violations are as set forth hereinabove, and include the failure to properly abate the
14 asbestos problem in the Subject Premises, failure to comply with legal requirements prior
15 to commencement of the abatement work, knowingly exposing Plaintiffs to toxic asbestos,
16 etc. Each of these acts also constitute an unfair business practice and several of the
17 actions constitute fraudulent practices. These actions all constitute unfair business
18 practices forbidden by law within the meaning of B & P Code § 17200.

19 84. B & P Code § 17203 entitles Plaintiffs to an injunction as against the
20 Defendants, and each of them, to prevent Defendants' ongoing unfair business practices.
21 B & P Code § 17203 permits this Court to grant to Plaintiffs or any other person
22 restitution from Defendants for any money or property, real or personal, which may have
23 been acquired by said Defendants through means of such unfair business practices
24 and empowers the Court to force Defendants to disgorge the profits inappropriately
25 obtained by them through the above-stated unfair business practices.

26 WHEREFORE, Plaintiffs pray for injunctive and other relief according to
27 proof at trial.

28

ELEVENTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress—Against Abdelmalak)

85. Plaintiffs reallege paragraphs 1 through 35, 37 through 39, 41 through 44, 46, 48, 49, 51 through 54, 56 through 58, 60 through 65, 73 through 78 and 80 through 84 of this Complaint as though fully set forth herein.

86. Defendant Abdelmalak inflicted severe emotional distress upon Plaintiffs by: sending her henchman to threaten and harass Plaintiff; threatening Plaintiffs with eviction or other unspecified harm; barring Plaintiffs from using the building elevator; refusing to allow Plaintiffs to display the American flag in front of their apartment; and other intentional acts. All of these acts were done with the purpose and intention of inflicting severe emotional distress upon Plaintiffs and thereby drive Plaintiffs from the Subject Premises. At the time Abdelmalak acted as herein alleged, she knew, or reasonably should have known, that Plaintiffs would suffer extreme physical illness, emotional distress, embarrassment, frustration, annoyance, inconvenience, anger, shame, physical pain and discomfort, and grief as a result of her actions.

87. Due to Defendant's intentional conduct, Plaintiffs suffered extreme emotional distress, anger, frustration, fear and inconvenience.

88. As a direct and proximate result of Defendants' intentional and negligent conduct, Plaintiffs suffered actual, general, and special damages including extreme emotional distress as set forth herein. The total of compensatory damages suffered by Plaintiffs are not known at present but are in the sum of not less than \$1,500,000.00.

89. Defendant's actions were despicable, knowing, intentional, willful, malicious, and oppressive, because Defendant knew and intended that her actions would cause harm to Plaintiffs, as they did. Therefore, Plaintiffs are entitled to exemplary and punitive damages in an amount to be ascertained at the time of trial.

1 WHEREFORE, Plaintiffs pray for compensatory damages in the sum of not
2 less than \$1,500,000.00 and attorneys fees and punitive damages according to proof at
3 trial.

4
5 **TWELFTH CAUSE OF ACTION**

6 **(Fraud/Deceit–Against Defendants Abdelmalak and UEI)**

7 90. Plaintiffs reallege paragraphs 1 through 35, 37 through 39, 41 through
8 44, 46, 48, 49, 51 through 54, 56 through 58, 60 through 65, 73 through 78, 80 through 84
9 and 86 through 89 of this Complaint as though fully set forth herein.

10 91. At the time that Abdelmalak hired UEI, in late September or early
11 October 2003, to perform the SCAQMD cleanup work mandated under the remediation
12 order issued to her, Abdelmalak and UEI conspired to disregard the SCAQMD Procedure
13 5 Asbestos Clean-Up Plan and to violate applicable regulatory standards in the asbestos
14 remediation work to be done at the Subject Property. On or about December 1, 2004,
15 Plaintiff Michael Hudspeth had a telephone conversation with an individual identified as
16 “Rob,” who said he was a manager at UEI. Rob informed Plaintiff that the UEI site
17 foreman for the work at the Subject Property, whose name is unknown to Plaintiffs, made
18 a deal with Abdelmalak whereby he agreed to abrogate the Procedure 5 guidelines by not
19 disposing of contaminated personal property from Plaintiffs’ apartment. Rob admitted
20 that the foreman had taken an under-the-table payment from Abdelmalak to preserve the
21 contaminated property despite the regulation requiring that it be disposed of. The
22 intention of this scheme was to allow Abdelmalak to avoid paying to replace Plaintiffs’
23 personal items after disposal; instead, the Defendants intended to simply return the items
24 to Plaintiffs in their contaminated state. The identity of the UEI employee who sealed the
25 plan with Abdelmalak is unknown to Plaintiffs, but is the subject of presently ongoing
26 discovery. Clearly, UEI is aware of the identities of all staff members who were involved
27 in the project, and Abdelmalak knows the identity of the person(s) with whom she
28 conspired, thus the identity of the employee(s) in question is within Defendants’

1 knowledge, not Plaintiffs’.

2 92. The SCAQMD clean-up plan called for all cloth and porous items in the
3 unit to be removed from the Subject Premises and discarded as hazardous waste in an
4 appropriate landfill. SCAQMD has determined that such items can never be fully
5 decontaminated and thus must be destroyed. Abdelmalak knew this and knew she would
6 be required to reimburse Plaintiffs for the replacement of their contaminated belongings.
7 She thereupon formulated a scheme to save money by conspiring with UEI to have UEI
8 employees not dispose of most of Plaintiffs’ contaminated personal property as part of the
9 remediation. As part of this conspiracy, Abdelmalak secured UEI’s complicity in
10 unlawfully preserving Plaintiffs’ contaminated clothing and other belongings, which UEI
11 staff did not dispose of, but rather bagged, stored and later returned to Plaintiffs even
12 though fully contaminated with asbestos. This included Plaintiffs vacuum cleaner, a
13 machine that they had used to collect asbestos-laden dust from their contaminated carpet.
14 By forming and carrying out this secret conspiracy, Defendants intended to minimize the
15 remediation costs and ultimate financial responsibility of Abdelmalak. Plaintiffs’
16 contaminated clothing and other cloth and porous belongings were returned to them by
17 UEI at Abdelmalak’s direction, thereby compounding the risks and harm to Plaintiffs.

18 93. At the time that they embarked on their plan to skirt SCAQMD’s
19 requirements, Defendants represented to Plaintiffs that their apartment and personal
20 property would be handled according to the appropriate remediation protocols dictated by
21 SCAQMD. These representations were made by Abdelmalak and one of the unidentified
22 UEI staff members described above. In making these representations to Plaintiffs,
23 Defendants intended to induce Plaintiffs’ reliance on Defendants’ purported ability and
24 desire to carry out the remediation work in a safe, lawful and complete manner. In fact,
25 Defendants had intention of performing the remediation work as it was required to be
26 done. In conspiring against Plaintiffs and the regulatory authorities to violate state and
27 local laws, regulations and orders affecting asbestos remediation and abatement as alleged
28 herein, Abdelmalak and UEI intended to deceive Plaintiffs as to the legality, efficacy,

1 44, 46, 48, 49, 51 through 54, 56 through 58, 60 through 65, 73 through 78, 80 through
2 84, 86 through 89 and 91 through 96 of this Complaint as though fully set forth herein.

3 98. Plaintiffs are informed and believe and thereon allege that Defendant
4 UEI and/or employees of same unlawfully took possession of Plaintiffs' property with the
5 intention of permanently depriving Plaintiffs of said property as alleged herein. The
6 property in question included, but is not limited to, leather jackets, shoes and other
7 expensive clothing, hand and/or power tools, and other personal effects. Defendants
8 and/or its employees have failed to return this property to Plaintiffs' detriment. The total
9 value of the converted property is not known with certainty but is in the sum of not less
10 than \$20,000.00.

11 99. As UEI's employer, Defendant Abdelmalak is legally responsible for
12 the tortious conduct of UEI in converting Plaintiffs' property under the doctrine of
13 *respondeat superior*.

14 100. Defendants acted with a conscious disregard for the rights of
15 Plaintiffs. Plaintiffs are therefore entitled to exemplary and punitive damages in an
16 amount to be ascertained at the time of trial.

17 WHEREFORE, Plaintiffs pray for compensatory damages in the sum of not
18 less than \$20,000.00 and punitive damages according to proof at trial.

19
20 **FOURTEENTH CAUSE OF ACTION**

21 **(Under Health and Safety Code §§ 25249.5, et seq.-**
22 **Against Defendants Abdelmalak and UEI)**

23 101. Plaintiffs reallege paragraphs 1 through 35, 37 through 39, 41 through
24 44, 46, 48, 49, 51 through 54, 56 through 58, 60 through 65, 73 through 78, 80 through
25 84, 86 through 89, 91 through 96 and 98 through 100 of this Complaint as though fully
26 set forth herein.

27 102. In undertaking to perform the above-described asbestos removal
28 and/or remediation actions in the manner alleged herein, Defendants knowingly and

1 intentionally exposed Plaintiffs, Defendants' workers and possibly others to be exposed to
2 asbestos, a chemical known to the State of California to cause cancer and/or reproductive
3 toxicity within the meaning of Cal. Health and Safety Code § 25249.6 [Proposition 65],
4 without first giving said individuals a clear and reasonable warning of such exposure.

5 103. On January 9, 2004, 2004, Plaintiffs sent a 60-day notice to
6 Defendants Abdelmalak and UEI pursuant to Cal. Health and Safety Code § 25249.7,
7 notifying said Defendants of the Proposition 65 violation alleged herein. Plaintiffs duly
8 served a copy of said notice on all governmental prosecutorial agencies required by law.
9 A copy of the 60-day notice and service declaration is attached hereto as Exhibit B.
10 Plaintiffs have not been advised by any governmental agency of an intention to commence
11 a public prosecution of the acts alleged herein.

12 104. The stated Defendants have exposed Plaintiffs, their visitors and
13 Defendants' own employees to asbestos above the threshold level established under
14 Proposition 65 for that contaminant without first providing such persons a clear and
15 reasonable warning as to such exposure. The exposures occurred more than twelve
16 months following the listing of asbestos as a chemical known to the State of California to
17 cause cancer and/or reproductive toxicity within the meaning of Proposition 65.

18 WHEREFORE, Plaintiffs pray for statutory penalties, injunctive relief and
19 attorneys fees according to proof at trial.

20
21 WHEREFORE Plaintiffs pray for relief as follows:

22 **AS TO THE FIRST CAUSE OF ACTION:**

23 1. General and special damages in the sum of not less than \$1,500,000.00;

24 **AS TO THE SECOND CAUSE OF ACTION:**

25 1. General and special damages in the sum of not less than \$1,500,000.00;

26 **AS TO THE THIRD CAUSE OF ACTION:**

27 1. General and special damages in the sum of not less than \$1,500,000.00;

28 2. Punitive Damages;

1 **AS TO THE FOURTH CAUSE OF ACTION:**

2 1. General and special damages in the sum of not less than \$1,500,000.00;

3 **AS TO THE FIFTH CAUSE OF ACTION:**

4 1. General and special damages in the sum of not less than \$1,500,000.00;

5 **AS TO THE SIXTH CAUSE OF ACTION:**

6 1. A rebate or reimbursement on rents paid over two years prior to filing in the sum
7 of not less than \$18,000.00;

8 **AS TO THE SEVENTH CAUSE OF ACTION:**

9 1. General and special damages in the sum of not less than \$1,500,000.00;

10 2. Punitive damages;

11 **AS TO THE EIGHTH CAUSE OF ACTION:**

12 1. A rebate or reimbursement on rents paid over two years prior to filing in the sum
13 of not less than \$18,000.00;

14 **AS TO THE NINTH CAUSE OF ACTION:**

15 1. General and special damages in the sum of not less than \$1,500,000.00;

16 2. Statutory attorney's fees pursuant to Civil Code §§ 1942.4, *et seq.*;

17 **AS TO THE TENTH CAUSE OF ACTION:**

18 1. For a temporary and permanent injunction pursuant to B & P Code § 17203 to
19 enjoin Abdelmalak's ongoing unfair business practices by barring said Defendant's
20 from operating their apartment buildings in an unsafe, unsanitary, substandard
21 condition and manner or from leasing, offering for lease, or otherwise operating the
22 premises in question as a residential leased property, or from harassing or
23 threatening Plaintiffs;

24 2. For a permanent injunction pursuant to B & P Code § 17203 to enjoin Defendant
25 UEI's ongoing unfair business practices by barring said Defendant from operating
26 its asbestos remediation and abatement business in an illegal, unsafe and fraudulent
27 manner;

28 3. For restitution pursuant to B & P Code § 17203 for Plaintiffs' injuries;

- 1 4. For an order forcing Defendants to disgorge to Plaintiffs and other similarly
2 affected persons the profits obtained by Defendants through their unfair business
3 practices;
4 5. For statutory attorney's fees pursuant to C.C.P. § 1021.5 under the private
5 attorney general and substantial benefit doctrines;

6 **AS TO THE ELEVENTH CAUSE OF ACTION:**

- 7 1. General and special damages in the sum of not less than \$1,500,000.00;
8 2. Punitive Damages;

9 **AS TO THE TWELFTH CAUSE OF ACTION:**

- 10 1. General and special damages in the sum of not less than \$1,500,000.00;
11 2. Punitive Damages;

12 **AS TO THE THIRTEENTH CAUSE OF ACTION:**

- 13 1. Compensatory damages in the sum of not less than \$20,000.00;
14 2. Punitive damages;

15 **AS TO THE FOURTEENTH CAUSE OF ACTION:**

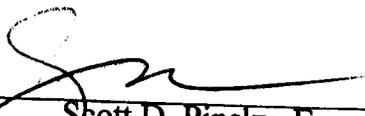
- 16 1. Statutory penalties of up to \$2,500 per day for each violation of Proposition 65;
17 2. Injunctive relief;
18 3. Attorneys fees;

19 **AS TO ALL CAUSES OF ACTION:**

- 20 1. For costs of suit herein; and
21 2. For such other and further relief as the Court deems just and proper.

22 Dated: July 21, 2004

LAW OFFICES OF SCOTT D. PINSKY

23
24
25
26 By: 
27 Scott D. Pinsky, Esq.
28 Attorneys for PLAINTIFFS

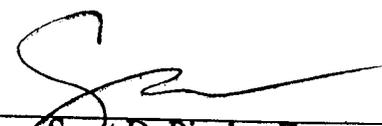
DEMAND FOR JURY TRIAL

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Plaintiffs hereby request trial by jury as to all issues and claims where such right exists by law.

Dated: July 21, 2004

LAW OFFICES OF SCOTT D. PINSKY

By: 

Scott D. Pinsky, Esq.
Attorneys for PLAINTIFFS

APARTMENT RENTAL AGREEMENT

(Month to Month Tenancy — Furnished or Unfurnished)

THIS RENTAL AGREEMENT shall evidence the terms under which the parties whose signatures appear below and are identified as Landlord and Tenant, respectively, do hereby agree on the part of Landlord to rent to Tenant, and on the part of Tenant to rent from Landlord, the premises herein described under the following terms and conditions:

1. PREMISES: Apartment No. 312, located at 2414 Bayview Ave in the City of West Los Angeles and State of California 90064 Assigned Parking Area No. _____ Assigned Storage Area No. _____

2. TERM AND RENTAL: The term of this rental agreement shall commence at 12:01 A.M. on the first day of October, 1944, and shall be for a tenancy from month-to-month at a monthly rental of \$ 650 for the first month and a monthly rental of \$ 650 for each succeeding month, payable in advance on or before the 1st day of each month at the office or apartment of the manager or owner of the building.

3. INITIAL PAYMENTS: Landlord acknowledges receipt of the following agreed amounts: First Month's Rental \$ _____ Other Advance Rental \$ _____ Cleaning Deposit \$ _____ Key Deposit \$ 50 Security Deposit \$ 650

The total of these amounts, except for the First Month's Rental, shall secure the performance of the terms of this agreement and shall be returned to Tenant within two weeks after Tenant has completely vacated the premises less any unpaid rent, damages to the premises, the cost of cleaning the premises to commercial standards and any other amount due under the terms of this agreement. Tenant is to pay when due any utility or other charge accruing in connection with the use of the premises except for water and the following agreed items: _____

A late fee of \$ 25 shall be added to any payment of rent not made before three days after the due date or for which a deficient check shall have been given.

4. OCCUPANTS: Regular occupants of the premises shall be restricted to those parties who have signed this agreement and the following named individuals: KAREN & MICK HUDSPETH The stay of any other person shall not exceed one week without written authorization of Landlord or his agent. Tenant shall pay additional rent for the period of stay of any unauthorized occupant at a rate of \$ _____ per month and acceptance of such payment by Landlord shall not waive any requirement of this agreement.

5. CONDITION OF PREMISES: By executing this agreement, Tenant acknowledges that he has received the premises and such appliances, furniture, furnishings or other contents as may be provided therewith, including but not restricted to those items listed on the inventory herein and finds them to be in good and clean condition and repair except as may be indicated elsewhere in this agreement. Tenant agrees to take good care of the premises and its contents, to keep the premises on or about the premises, and at the termination of this agreement to return the premises and its contents clean and free from trash and in the same condition as when received except for such ordinary wear and tear as reasonable and careful use would have caused.

6. USE OF PREMISES: a. Noise — All activities of Tenant or those of his guests or occupants are to be conducted in a quiet, dignified manner so as not to annoy or disturb other tenants or create a nuisance in any way. b. Unlawful Activities — Tenant agrees not to use the premises for any commercial enterprise or for any purpose which is unlawful, against city ordinances, or which would injure the reputation of the building or its occupants in any way. c. Animals — No animal, bird or pet of any kind may be kept on or about the premises without the written permission of Landlord or his agent. d. Alterations — No change of locks, installation of aerials, lighting fixtures or other equipment, use of nails, screws or fastening devices on walls, ceiling or woodwork, or alteration or redecoration of the premises is to be made without prior written authorization of Landlord or his agent. e. Cleaning and Refuse — Tenant shall keep the premises, and its equipment and contents in a reasonably clean and neat condition at all times. All refuse and garbage shall be deposited by Tenant in the proper receptacles as provided and Tenant shall cooperate in keeping the refuse area neat. Tenant shall be responsible for disposing of articles of such size or nature as are not acceptable by the rubbish hauler for the building. f. Mechanical Equipment — Automobiles, motorcycles or other mechanical equipment may be parked only in such space as may be assigned to Tenant and are not to be washed or disassembled on or near the general premises. g. Exterior Display — No signs, laundry or articles of any kind are to be hung or displayed by Tenant on the exterior of the premises except for laundry in an authorized laundry drying area. h. Loitering — Lounging or unnecessary loitering in the halls or on the front steps or public balconies in such a way as to interfere with the convenience of other tenants is prohibited. i. House, Pool and Laundry Rules — Tenant shall comply with such house, pool or laundry rules as may be posted from time to time on the general premises. Rights of usage to the pool area or laundry room are conditioned upon reasonable and careful use and are gratuitous subject to revocation by Landlord at any time for any reason.

7. DAMAGES: Tenant shall promptly pay for any damage to the premises, general premises, contents, furnishings and equipment thereof which may be caused by Tenant, his guests or occupants. Drains and waste pipes are acknowledged to have been clear at commencement of this agreement unless reported otherwise to Landlord within one week thereafter and the cost of clearing any partial or complete stoppage occurring during the term of this agreement shall be paid by Tenant.

8. ABANDONMENT OR ASSIGNMENT: Tenant covenants that he will occupy the premises continuously except for normal vacation periods and agrees that any absence therefrom for more than one week, during any part of which time rental is delinquent or during which time the tenant shall have removed the major part of his belongings, shall be conclusively presumed to be an abandonment of the premises at the option of the Landlord and shall entitle the Landlord to take possession and re-rent the premises. Tenant agrees not to transfer, assign or sublet the premises or any part thereof and hereby authorizes Landlord as his agent to evict any other person claiming possession by way of assignment or subletting under his authority or this agreement.

9. RESPONSIBILITY OF OWNER: a. Right of Entry — Landlord or his agent, by himself or with others, shall have the right to enter the premises at any time in case of emergency or suspected abandonment for the purpose of repairing or examining the same or, upon twenty-four hours advance notice, for the purpose of showing the premises during normal business hours to prospective tenants or purchasers. b. Loss or Theft — Landlord shall not be responsible for loss, injury or damage to the personal property or person of Tenant, his guests or occupants, caused directly or indirectly by acts of God, fire, theft, burglary, malicious acts, riot, insurrection, civil commotion, the elements, defects in the building, furnishings, equipment, outside stairways, walks or landscaping, or by the neglect of other tenants or owners of contiguous property. c. Defects and Repairs — Except in emergency, Tenant agrees not to make any repairs without first securing the approval of the manager or Landlord and agrees to give at least thirty days advance notice in writing of any alleged de-

000001 EXHIBIT A

failure of the prior tenant to vacate or for any other reason, the agreed rental shall abate until the actual date of possession or the Landlord may return all prior payments to Tenant and cancel this agreement without further obligation to Tenant in any way.

10. **DEFAULT:** If any default in the payment of rent or in any other term of this agreement is not cured within 3 days after notice of such default is given Tenant, or if Tenant shall breach this agreement, commit a nuisance or abandon the premises, Landlord may repossess the premises and forthwith terminate this agreement without further notice and Tenant shall promptly surrender the premises and pay to Landlord all sums to which he may be entitled, including damages, reasonable attorney's fees and any other expense caused by such default or in regaining possession of the premises. Acceptance of rent by Landlord after any default shall not be construed to waive any right of Landlord or affect any notice or legal action theretofore given or commenced.

Any provision or covenant of this agreement which may be in conflict with the laws of the state in which it is used shall be void to the extent that it is in conflict with such laws but shall not invalidate this agreement or any other part thereof.

Items due under this agreement shall be immediately payable and if not paid within five days from due date Landlord may add the amount as rental to be paid on the next rental payment date.

11. **RENEWAL OR TERMINATION:** a. *Automatic Renewal* — This agreement is automatically renewed from month to month but may be terminated at any time by either party giving to the other in writing 30 days prior notice of intention to terminate. No oral notice or notice given by Tenant under which the termination date is not definite or Tenant does not completely vacate the premises including all storage areas within the said 30 days shall be effective. b. *Holding Over* — It is understood that fulfillment of the requirements of such notice of termination on or before the termination date is essential to permit Landlord to re-rent the premises or prepare for re-rental on a definite date and it is therefore agreed between the parties that should Tenant hold over the premises beyond the termination date or fail to vacate on or before the termination date, the rental for such period shall be twice the normal amount and Lessee shall be liable for such other damages through loss of prospective tenant or otherwise as Landlord may suffer due to such holding over. c. *Termination Procedure* — Upon termination — (1) Tenant shall completely vacate the premises, including any storage or other areas of the general premises which he may be occupying or have goods stored therein. (2) Tenant shall also deliver all keys, personal property listed on the attached inventory and all personal property furnished for Tenant's use during the term of this agreement, whether or not listed on the inventory, to Landlord in good, clean and sanitary condition, reasonable wear and tear excepted. (3) Before departure, Tenant shall leave his forwarding address and shall allow Landlord or his agent to inspect the premises in Tenant's presence to verify the final condition of the premises and its contents.

12. **PERIOD OF RENTAL:** Tenant represents that he will occupy the premises under the terms of this agreement for at least 6 Months months in lieu of which the Security Deposit is to be applied to the cost of re-rental and any loss due to intervening vacancy and the balance returned to Tenant.

13. **OTHER COVENANT:**

INVENTORY

Area	Item Description and Color	Area	No.	Item Description and Color
Living Room	1 <u>Drape</u>	Bathroom	1	<u>Drape</u>
		No. 1		
		Bathroom		
		No. 2		
		Other		
Kitchen and Dinette	1 <u>Stove</u>			
	1 <u>Refrigerator</u>			

IN WITNESS WHEREOF, the parties have set their hands and seals this _____ day of _____ and by signing this agreement acknowledge receipt of a copy thereof.

LANDLORD Jimmie Cochran TENANT Karen Hudspeth
By _____ By _____

000002 EXHIBIT A

LAW OFFICES OF
SCOTT D. PINSKY

SCOTT D. PINSKY*

*ADMITTED IN CALIFORNIA, NEW YORK
& WASHINGTON, D.C.

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January 9, 2004

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Attorney General of California
Edward G. Weil, Esq.
Deputy Attorney General
1515 Clay St., 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550

State of California - Prop. 65 Enforcement Reporting
Attention: Prop 65 Coordinator
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, California 94612-0550

Steve Cooley, Esq.
Los Angeles County District Attorney
County of Los Angeles
210 West Temple Street, Suite 18000
Los Angeles, CA 90012-3210

Rockard J. Delgadillo, Esq.
Los Angeles City Attorney
800 City Hall East
200 North Main Street
Los Angeles, CA 90012

Re: **60-DAY NOTICE OF ENVIRONMENTAL VIOLATIONS UNDER
PROPOSITION 65 RE SAMIRA ABDELMALAK AND UNLIMITED
ENVIRONMENTAL, INC.**

Dear Ladies and Gentlemen:

NOTICE IS HEREBY GIVEN pursuant to Cal. Health & Safety Code section 25249.7(d) (the California Safe Drinking Water and Toxic Enforcement Act of 1986, also known as "Proposition 65" [Cal. Health & Safety Code § 25249.5, et seq., hereinafter "the Act"]) by

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the undersigned that we believe that the noticed parties and alleged violators, Samira Abdelmalak and Unlimited Environmental, Inc. (hereinafter "Noticed Parties"), are in violation of section 25249.6 of the Act. The Noticed Parties failed to provide the clear and reasonable warnings required by State law before exposing persons to the chemical asbestos.

Description of Violation:

1. The noticing individual is the undersigned, attorney for claimants Michael & Karen and Michael Hudspeth (hereinafter "Claimants"). Claimants at all relevant times have resided at the premises which is the subject of this notice: 2414 S. Barrington Drive, Los Angeles CA 90064. The subject premises are residential housing units an apartment building owned by Samira Abdelmalak and leased by her to Claimants and others.
2. The alleged violators are the Noticed Parties: Samira Abdelmalak ("Abdelmalak") and Unlimited Environmental, Inc. ("UEI").
3. The time period in question is from approximately 2000 to the present in the case of Noticed Party Samira Abdelmalak and from approximately September 2003 to the present in the case of Noticed Party Unlimited Environmental, Inc.
4. The chemical at issue is asbestos.
5. The persons exposed include Claimants as well as workers employed by the Noticed Parties and other tenants who reside at the premises owned and operated by Abdelmalak. Claimants allege that their unit and other units owned and leased by Abdelmalak contain asbestos. Claimants allege Abdelmalak employed UEI to perform remediation at these sites. The activities of the Noticed Parties did not meet the requirements of for asbestos remediation and abatement under California law and South Coast Air Quality Management District ("SCAQMD") regulations. These activities have in fact exacerbated the problem at the subject premises and exposed Claimants and others to more asbestos and other contaminants than would have been the case had they done nothing.

Route of Exposure:

The manner in which the Noticed Parties permitted Claimants and others to be exposed to asbestos was through inhalation of airborne friable asbestos particles that were present in high concentrations within the Claimants' dwelling due to the deterioration and decomposition of "popcorn"-type ceiling material.

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Background and Allegations:

Noticed Party Abdelmalak owns and operates a residential apartment building in Los Angeles at the address stated above. From the date of her ownership and operation of the premises, she has leased unit no. 312 to Claimants. During most or all of the past four years, the ceiling "popcorn" material in Claimants' unit has been deteriorating and decomposing, apparently due to the presence of moisture from rain damage from a leaking roof. The ceiling material has steadily flaked off of the ceiling to the floor, furniture, clothing, and pets of Claimants and onto their persons. The flaking material has been tested and shown to contain high levels of friable asbestos fibers. The prevalence and persistence of this material in their living area has exposed Claimants to this contaminant through inhalation. Claimants are informed and believe and thereon allege that similar conditions exist in other units of the building in question.

Asbestos has been identified by the State of California as a chemical known to cause cancer. The exposure level threshold under Proposition 65 for asbestos is inhalation of at last 100 fibers per day, where such fibers are at least 5 micrometers in length and 0.3 micrometers in width, with a length-to-width ration of at least 3:1 as measured by phase contrast microscopy.

In September 2003, in violation of numerous state and local laws and regulations, Abdelmalak hired an unlicensed and inexperienced workman to scrape the "popcorn" material off of the ceiling in Claimants' apartment. No testing was done and no warnings were posted prior to this work. Asbestos-containing ceiling material was dispersed throughout Claimants' dwelling and possessions as a result of this work. Thereafter, agents of the SCAQMD were notified of Abdelmalak's activities and issued a notice requiring asbestos testing and remediation pursuant to a Rule 1403 Procedure 5 Asbestos Clean-Up Plan. Exceedingly high levels of asbestos were found throughout Claimants' unit.

Abdelmalak then hired Noticed Party UEI to perform work mandated by SCAQMD. In or about September 2003, UEI undertook to perform tasks required under the SCAQMD Asbestos Clean-Up Plan but failed to complete the work in a competent manner, thereby exposing Claimants to further inhalation of friable asbestos fibers from approximately September 2003 to the present. In so doing, UEI failed to provide clear and reasonable warnings to Claimants that they were being exposed to asbestos contamination by virtue of the very of the very actions by UEI that were supposed to remove, remediate and abate the asbestos danger.

Abdelmalak and UEI are thus co-violators of Proposition 65 as a consequence of the above-described acts and omissions.

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Other Information:

Accompanying this 60-day notice is a Certificate of Merit as required by Cal. Health & Safety Code section 25249.7(d).

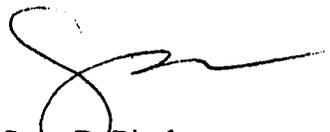
Accompanying Noticed Parties' copy of this Notice is a Summary of the Act describing Proposition 65 in general.

Accompanying the copy of the Certificate of Merit delivered to the enforcement officials identified above is the information identified in Cal. Health & Safety Code section 25249.7(h)(2).

Claimants have commenced a civil action against Abdelmalak and UEI in the Superior Court of California, County of Los Angeles, entitled Hudspeth v. Abdelmalak, et al., Case No BC 306534. Upon expiration of sixty days following service of this notice, Claimants will seek leave of court to amend their complaint to add claims under Proposition 65 against the defendants if enforcement action is not undertaken by that time by state or local officials.

Recipients of this notice are invited to contact the undersigned for further information concerning the alleged violations described herein.

Very truly yours,



Scott D. Pinsky

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List of Attachments, by recipient:

All recipients	Certificate of Merit
Bill Lockyer, Esq. Attorney General of California Edward G. Weil, Esq. Deputy Attorney General State of California Prop. 65 Enforcement Reporting Steve Cooley, Esq. Los Angeles County District Attorney Rockard J. Delgadillo, Esq. Los Angeles City Attorney	Confidential information required under Cal. Health & Safety Code § 25249.7(h)(2)
Noticed Parties	Summary of the Act (Proposition 65)

cc: Michael and Karen Hudspeth (w/all attachments)

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CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, SCOTT D. PINSKY hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the noticing party.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.
- (4) Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 9, 2004



SCOTT D. PINSKY

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